

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
LAFAYETTE DIVISION**

MARY DOE and NANCY ROE,)
)
Plaintiffs,)
)
)
) Cause No. 4:18-cv-00089
v.)
)
PURDUE UNIVERSITY and ALYSSA)
ROLLOCK and KATIE)
SERMERSHEIM, in their official and
individual capacities,)
)
Defendants.)
)

AGREED PROPOSED PRELIMINARY JURY INSTRUCTIONS

Come now the parties, by and through their respective counsel, and hereby submit their Agreed Proposed Preliminary Jury Instructions and request that the Court give the proposed instructions attached hereto and numbered 1-2, 4-17, 19, 21-23. The parties reserve the right to add to or modify their submission of instructions depending on how the testimony and evidence come in at trial. This filing reflects the parties' best efforts to anticipate the likely evidence at trial.

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Attorneys for Defendants

PRELIMINARY JURY INSTRUCTION NO. 1

Ladies and gentlemen: You are now the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some instructions. At the end of the trial, I will give you more detailed instructions. Those instructions will control your deliberations.

One of my duties is to decide all questions of law and procedure. From time to time during the trial and at the end of the trial, I will instruct you on the rules of law that you must follow in making your decision.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 1

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 2

The trial will proceed in the following manner:

First, Plaintiffs' attorney may make an opening statement. Next Defendants' attorney may make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

After the opening statements, Plaintiffs will call witnesses and present evidence. Then, Defendants will have an opportunity to call witnesses and present evidence. After the parties' main cases are completed, Plaintiffs may be permitted to present rebuttal evidence and Defendants may be permitted to present sur-rebuttal evidence.

After the evidence has been presented, the attorneys will make closing arguments and I will instruct you on the law that applies to the case.

After that, you will go to the jury room to deliberate on your verdict.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 2.

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 4

When I say a particular party must prove something by “a preponderance of the evidence,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 4

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 5

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you.

Authorities:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 6

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 6

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and any facts that I may instruct you to find or the parties may agree or stipulate to.

A stipulation is an agreement between both sides that certain facts are true.

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case: the attorneys' statements, arguments, questions, and objections of the attorneys; any testimony that I instruct you to disregard; and anything you may see or hear when the Court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs and instruct you on the purpose for which the item can and cannot be used. You should also pay particularly close attention to such an instruction, because it may not be available to you in writing later in the jury room.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction Nos. 7 and 11

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 7

You will have to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also have to decide what weight, if any, you give to the testimony of each witness.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 8

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 8

You may have heard the phrases “direct evidence” and “circumstantial evidence.”

Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. When the time comes to deliberate on your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 9

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 9

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 10

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 10

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. You should not infer or conclude from any ruling or other comment I may make that I have any opinions about how you should decide this case. And if I should sustain an objection to a question that goes unanswered by a witness, you should not guess or speculate what the answer might have been, and you should not draw any inferences or conclusions from the question itself.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 13

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 11

At times during the trial it may be necessary for me to talk with the lawyers here at the bench out of your hearing, or by calling a recess. We meet because often during a trial something comes up that doesn't involve the jury.

We will, of course, do what we can to keep the number and length of these conferences to a minimum, but you should remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 14

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 12

Any notes you take during this trial are only aids to your memory. The notes are not evidence. If you do not take notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

When you leave the courthouse during the trial, your notes should be left in the jury room. When you leave at night, your notes will be secured and not read by anyone. At the end of the trial, your notes will be destroyed, and no one will be allowed to read the notes before they are destroyed.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 15.

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 13

Pay close attention to the testimony as it is given. At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 17.

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 14

You may submit questions to witnesses to clarify their testimony during trial under certain conditions.

If you feel the answer to your question would be helpful in understanding the case, you should raise your hand after the lawyers have completed their examinations but before the witness is excused. I will have you write you question and hand it to the clerk. I will then privately confer with the lawyers about the question and make a ruling on whether the law allows the question to be asked of that witness. If the question is of the type that is allowed, I will address the question to the witness. Please do not directly speak to me, the lawyers, or the witnesses, but carefully follow this procedure if you wish to have a specific question addressed to a witness.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 19.

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 15

During the trial, I may sometimes ask a witness questions. Do not assume that because I ask questions I hold any opinion on the matters I ask about, or on how the case should be decided.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 20

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 16

All jurors must follow certain rules of conduct, and you must follow them, too.

First, you must not discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else. You must not let others to discuss the case with you. If anyone tries to talk to you about the case please let me know about it immediately;

Second, you must not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it;

Third, you must not do any research, such as consulting dictionaries, searching the Internet or using other reference materials, and do not make any investigation about the case on your own;

Fourth, if you need to communicate with me, you must give a signed note to the bailiff to give to me; and

Fifth, you must not make up your mind about what the verdict should be until after you have gone to the jury room to decide that case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

Authority:

Seventh Circuit Civil Sample Preliminary Jury Instruction No. 21

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 17

In this case one of the Defendant Purdue University is a state educational institution. All parties are equal before the law. A state educational institution is entitled to the same fair consideration that you would give any individual person.

Authority:

Seventh Circuit Jury Instruction No. 1.03 (as modified)

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 19

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

Authority:

Seventh Circuit Jury Instruction No. 1.13 (as modified)

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 21

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

Authority:

Seventh Circuit Jury Instruction No. 1.17

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 22

You must give separate consideration to each claim and each party in this case.

Although there are two plaintiffs, it does not follow that if one is successful, the other is, too.

Authority:

Seventh Circuit Jury Instruction No. 1.25 (as modified)

GIVEN: _____

MODIFIED: _____

REFUSED: _____

PRELIMINARY JURY INSTRUCTION NO. 23

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

Authority:

Seventh Circuit Jury Instruction No. 1.18

GIVEN: _____

MODIFIED: _____

REFUSED: _____